

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RUBY THOMAS,

VS.

**COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,**

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Case No. 4:13-CV743-RAS-KPJ

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On May 17, 2017, the report of the Magistrate Judge (Dkt. 24) was entered containing proposed findings of fact and recommendations that Plaintiff's Motion to Alter or Amend the Court's Order Dated March 22, 2017, Adopting the Magistrate Judge's Report and Recommendation and Affirming the Commissioner's Decision (Dkt. 22) be **DENIED**.

On April 20, 2017, Plaintiff Ruby Thomas filed her objections to the report (*see* Dkt. 25). The court has made a *de novo* review of the objections raised by Plaintiff, and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Plaintiff bases her motion on the recent Fifth Circuit decision in *Kneeland v. Berryhill*, 850 F.3d 749, (5th Cir. Mar. 8, 2017). However, Plaintiff's objections (Dkt. 25) fail to contest the Magistrate Judge's ultimate finding—that *Kneeland* is distinguishable because there the Administrative Law Judge ("ALJ") "fail[ed] to address—or even mention" the opinion of one of plaintiff's treating physicians. *Id.* at 761. In the case before the court, the ALJ explicitly discussed

the opinions of Plaintiff's treating physician, Dr. Stephens, and explained in detail his reasons for rejecting those opinions. *See* Dkt. 14.

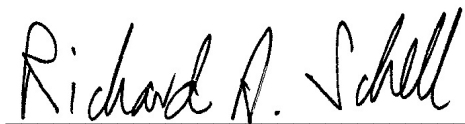
Although Plaintiff takes issue with the ALJ's findings, the ALJ has the sole responsibility for determining what weight to give the proffered medical evidence. *Johnson v. Bowen*, 864 F.2d 340, 343-44 (5th Cir. 1988); *Muse v. Sullivan*, 925 F.2d 785, 790 (5th Cir. 1991). The court may not reweigh the evidence in the record, try the issues *de novo*, or substitute its judgment for that of the ALJ, even if the evidence preponderates against the ALJ's decision. *Johnson*, 864 F.2d at 343; *see also Luckey v. Astrue*, 458 F. App'x 322, 326 (5th Cir. 2011). The record clearly demonstrates that substantial evidence supports the ALJ's decision. The court thus finds no merit to Plaintiff's objections.

Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

It is therefore **ORDERED** that "Plaintiff's Motion to Alter or Amend the Court's Order Dated March 22, 2017, Adopting the Magistrate Judge's Report and Recommendation and Affirming the Commissioner's Decision" (Dkt. 22) is **DENIED**.

IT IS SO ORDERED.

SIGNED this the 6th day of June, 2017.

A handwritten signature in black ink that reads "Richard A. Schell". The signature is written in a cursive, flowing style.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE